

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GEORGE DALIE,	)	
	)	Civil Action No. 2: 16-cv-0259
Plaintiff,	)	
	)	
v.	)	Judge Mark R. Hornak
	)	
PENNSYLVANIA DEPARTMENT OF	)	
CORRECTIONS, et al,	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM OPINION**

**Mark R. Hornak, United States District Judge**

This case was commenced on March 7, 2016, and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges.

Prior to service, Plaintiff twice amended his complaint. (ECF Nos. 6 and 12). In response to the Second Amended Complaint, the DOC Defendants<sup>1</sup> filed a motion to dismiss. (ECF No. 28). In response, Plaintiff filed a Third Amended Complaint, which supersedes the Second Amended Complaint and is the operative pleading.

Two motions to dismiss the Third Amended Complaint are pending: (i) Motion to

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<sup>1</sup> The following defendants are collectively referred to as the “DOC Defendants”:  
Pennsylvania Department of Corrections, Michael Troyan, Mark Dialesandro, William Shrader, Wallace Leggett, Michael A. Stella, Stacy Karp, John E. Wetzel, Diana Woodside, Carole Mattis, Paul Noel, Christopher Oppman, Arleen Humbert, John McAnany, Michael Zaken, D.J. Caro, Robert D. Gilmore, Tracey Shawley, and Karen Soko.

Dismiss filed by the DOC Defendants (ECF No. 53); and Motion to Dismiss filed by Defendant Elon Mwaura, PA-C (incorrectly identified by Plaintiff as “C. Mwaura”) . (ECF No. 65). Both motions seek to have the Third Amended Complaint dismissed in its entirety based on Plaintiff’s failure to exhaust his administrative remedies. Because Defendants presented material outside of the complaint, Magistrate Judge Eddy converted the motions to dismiss into motions for summary judgment on the issue of exhaustion, and allowed the parties time to submit additional briefing and evidence. Plaintiff filed an omnibus response to the motions. (ECF No. 68).

Also pending is Plaintiff’s motion for preliminary injunction (ECF No. 9), to which Defendants have responded in opposition. (ECF Nos. 34 and 74).

On January 23, 2018, Magistrate Judge Eddy filed a Report and Recommendation (ECF No. 81) recommending that each of the motions to dismiss be granted as the record evidence demonstrates that Plaintiff has failed to properly exhaust his administrative remedies under the Prison Litigation Reform Act. Additionally, Magistrate Judge Eddy recommended that the motion for preliminary injunction be dismissed. Plaintiff was served with the Report and Recommendation at his listed address and was advised that he had until February 9, 2018, to file written objections to the Report and Recommendation. To date, Plaintiff has not filed any objections nor has he sought an extension of time in which to do so.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the Court is in agreement with the conclusion of the Report and Recommendation and finds that the Defendants have satisfied their burden under Rule 56 of the Federal Rules of Civil Procedure in identifying evidence which demonstrates the absence of a

genuine issue of material fact. The summary judgment record evidence demonstrates that Plaintiff has failed to properly exhaust his administrative remedies and Plaintiff has not demonstrated that there was any interference by prison officials that rendered the DOC grievance process unavailable to him. *Davis v. Warman*, 49 F. App'x 365 (3d Cir. 2002). The Defendants' motions will be granted and Plaintiff's motion for preliminary injunction will be dismissed.

An appropriate order will be entered.



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Mark R. Hornak  
United States District Judge

cc: Plaintiff (by U.S. Mail)  
All counsel of record

Dated: February 26, 2018